

### **Amendments to the Claims**

This listing of the claims will replace all prior versions, and listings of claims in the application:

#### **Listing of Claims:**

1. (previously presented) An apparatus for encoding a mark into digital data, comprising:
  - means for locating in the digital data of an audio recording, using a predetermined pattern, at least two values that represents a flat area; and
  - means for modifying the values in the flat area to encode a mark into the flat area of the audio recording;
    - wherein the means for locating in the digital data is further comprised of:
      - means for calculating a variability for a selected portion of the digital data using the predetermined pattern; and
      - means for representing the flat area when the variability is less than a predetermined amount;
    - wherein the apparatus for encoding is part of a device receiving an unencoded data to create the digital data of the audio recording; and
    - wherein the apparatus for encoding is part of the device using the values in the flat area to create an encoded data of the audio recording.
2. (previously presented) The apparatus of claim 1, wherein the predetermined pattern is a regular pattern.
3. (previously presented) The apparatus of claim 1, wherein the predetermined pattern is an irregular pattern.
4. (previously presented) The apparatus of claim 1, wherein the predetermined pattern identifies a consecutive set of values.
5. (previously presented) The apparatus of claim 1, wherein the means for modifying the values is further comprised of:

means for modifying the values according to a recognizable amount.

6. (previously presented) The apparatus of Claim 5, wherein the means for modifying the values is further comprised of:

means for adding the recognizable amount to the values.

7. (previously presented) The apparatus of claim 5, wherein the means for modifying the values is further comprised of:

means for subtracting the recognizable amount from the values.

8. (previously presented) The apparatus of claim 5, further comprising the means for computing the recognizable amount includes:

a means for calculating a function of the variability in the flat area.

9. (previously presented) The apparatus of claim 8, wherein the means for computing the recognizable amount is further comprised of:

means for computing the recognizable amount as a multiple of the variability in the flat area.

10. (previously presented) The apparatus of claim 5, further comprising:

means for modifying the values in the flat area to provide at least one known peak in the flat area.

11. (previously presented) The apparatus of claim 1, wherein the means for modifying the values is further comprised of:

means for modifying at least two of the values in the digital data to represent a single mark value in the flat area.

12. (previously presented) The apparatus of claim 1, further comprising:

means for locating in the digital data, using a predetermined pattern, at least two values that represents a second flat area; and

means for modifying the values in the second flat area to encode the mark into the second flat

area.

13. (previously presented) The apparatus of claim 1, further comprising:

means for converting the format of the digital data.

14. (previously presented) The apparatus of Claim 1, at least one of the means is implemented using a computer accessing a memory.

15. (previously presented) The apparatus of Claim 1, wherein the device is included in a computer receiving the unencoded data.

16. (previously presented) The apparatus of Claim 1, wherein the device communicates with a processor within a computer to create the encoded data within the computer.

17. (previously presented) The apparatus of claim 1, wherein the predetermined pattern is one dimensional.

18. (previously presented) The apparatus of claim 1, wherein the predetermined pattern is two dimensional.

19. (previously presented) The method of claim 1, wherein the predetermined pattern is three dimensional.